

01
02
03
04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 TYLER MILLS,) CASE NO. C04-2342-RSL
07)
Plaintiff,)
08)
v.) REPORT AND RECOMMENDATION
09)
RON SIMS, et al.,)
10)
Defendants.)
_____)

11
12 INTRODUCTION AND SUMMARY CONCLUSION

13 This is a *pro se* civil rights action under 42 U.S.C. § 1983. Plaintiff filed this action in
14 November 2004 while he was incarcerated at the King County Correctional Facility (“KCCF”).
15 Plaintiff alleges in his supplemental and amended complaint, filed on January 14, 2005, that his
16 confinement in the acute psychiatric housing unit at KCCF violated his federal and state
17 constitutional rights, various federal statutes, and common law. Plaintiff also alleges in his
18 complaint that he was subjected to unconstitutional conditions of confinement during his
19 incarceration in the psychiatric housing unit. Specifically, plaintiff contends that he had limited
20 access to the commissary, he was denied adequate access to legal materials, he received
21 inadequate treatment and care for his mental health issues, and he was subjected to unsanitary,
22 unsafe, and uncomfortable living conditions.

01 Plaintiff identified 60 defendants in his amended complaint. Twelve of those defendants
02 were identified only as “John Doe” defendants and therefore have not been served. The remaining
03 48 defendants now move for summary judgment.¹ Plaintiff, despite having advised on at least
04 three occasions of the summary judgment requirements pursuant to *Rand v. Rowland*, 154 F.3d
05 952 (9th Cir. 1998), has filed no response to defendant’s motion. Defendant’s motion for
06 summary judgment is now ripe for review. This Court, having reviewed defendants’ motion, and
07 the balance of the record, concludes that defendants’ motion for summary judgment should be
08 granted.

09 FACTUAL BACKGROUND

10 Plaintiff’s claims all arise out of his placement and retention in the psychiatric housing unit
11 at KCCF. The record reflects that plaintiff was incarcerated at KCCF numerous times between
12 November 2002 and May 2005. (*See* Dkt. No. 12 at 6.) Plaintiff’s most recent period of
13 incarceration began on July 4, 2004, when he was booked into the jail on a charge of
14 communicating with a minor for immoral purposes. (Dkt. No. 28 at 1.) Plaintiff was released on
15 May 2, 2005, and apparently has not returned to KCCF since that time.² (*See* Dkt. No. 61 at 1.)
16 After plaintiff was booked into the jail on July 4, 2004, he was initially sent to the Regional Justice
17 Center (“RJC”) in Kent where he was classified as medium security. (Dkt. No. 28 at 1-2.)
18 However, once at the RJC, plaintiff began making statements indicating that he intended to harm
19 himself. (*Id.* at 2.) As a result of these statements, jail health providers were asked to assess

21 ¹ Defendants, in support of their summary judgment motion, rely on the declarations of Jim
22 McKeon and Dr. David Kersey which were previously submitted in support of defendants’
response to plaintiff’s motion for preliminary injunctive relief. (*See* Dkt. Nos. 28 and 29.)

² Plaintiff currently resides in Elk Mound, Wisconsin.

01 plaintiff. (*Id.*)

02 After reviewing plaintiff's history, which included past suicide attempts in jail³, jail health
03 providers directed that plaintiff be transferred to the acute psychiatric unit at KCCF where suicide
04 observation could be maintained. (Dkt. No. 29 at 2.) Plaintiff was first assigned to group suicide
05 observation housing, but was subsequently transferred to single cell suicide observation housing,
06 apparently as a result of an order entered by the King County Superior Court restricting plaintiff's
07 phone access to permit him access only to his attorney. (Dkt. No. 28 at 2.)

08 Documents submitted by defendants indicate that, in addition to his history of suicide
09 attempts, plaintiff has a history of ingesting, or threatening to ingest, various objects including
10 razor blades and sharpened toothbrushes. (Dkt. No. 29, Ex. B.) Dr. Kersey states in his
11 declaration that plaintiff has been sent to the hospital several times for treatment related to his
12 claims of self-harm. (Dkt. No. 29 at 2-3.) Dr. Kersey further states that plaintiff was continued
13 on 15 minute observation checks because of his behavior, and that his staff visited plaintiff on a
14 weekly basis for psychiatric evaluation follow-up. (*Id.* at 3.) The reports from the weekly visits
15 indicate that plaintiff consistently refused to respond to staff or denied needing any assistance
16 from staff. (*Id.*, Ex. E.)

17 Defendant McKeon states in his declaration that inmates who are placed in the psychiatric
18 housing unit have limited access to goods that might be used to harm themselves, and thus have
19 restricted access to commissary and legal materials. (Dkt. No. 28 at 3.) Defendant McKeon

20
21 ³ The record indicates that plaintiff overdosed on Tylenol on at least seven occasions
22 during prior periods of incarceration. (Dkt. No. 29, Ex. A.) A note on one of the documents
produced by defendants indicates that plaintiff has a history of convincing staff to reclassify him
to the general population by reporting that he is not suicidal, and then overdosing on dangerous
amounts of Tylenol. (*Id.*, Ex. A at 1.)

01 explains that restricted commissary means that inmates receive only basic hygiene items such as
02 soap, toothpaste, and toothbrushes. (*Id.*) Defendant McKeon notes, however, that inmates who
03 attempt to use these basic hygiene items to harm themselves might have their access to these items
04 restricted as well. (*Id.*) Defendant McKeon acknowledges that plaintiff was on restricted
05 commissary, but states that plaintiff was provided limited access to legal and research materials,
06 and was allowed to have a pencil and paper. (*Id.*)

07 DISCUSSION

08 Summary Judgment Standard

09 Summary judgment is appropriate when, viewing the evidence in the light most favorable
10 to the nonmoving party, there exists “no genuine issue as to any material fact” such that “the
11 moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A material fact
12 is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty Lobby, Inc.*, 477
13 U.S. 242, 248 (1986). Genuine issues of material fact are those for which the evidence is such that
14 “a reasonable jury could return a verdict for the nonmoving party.” *Id.*

15 In response to a properly supported summary judgment motion, the nonmoving party may
16 not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
17 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
18 existence of the elements essential to his case. *See Fed. R. Civ. P. 56(e)*. A mere scintilla of
19 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on
20 summary judgment, the court does not weigh evidence to determine the truth of the matter, but
21 “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547,
22 549 (9th Cir. 1994).

01 Defendants argue in their summary judgment motion that plaintiff fails to adequately allege
02 personal participation on the part of each of the named defendants. Defendants further argue that,
03 to the extent plaintiff may have adequately alleged personal participation, he nonetheless fails to
04 allege sufficient facts to establish any violation of federal or state law.

05 Personal Participation

06 In order to sustain a civil rights action, a plaintiff must show (1) that he suffered a violation
07 of rights protected by the Constitution or created by federal statute, and (2) that the violation was
08 proximately caused by a person acting under color of state or federal law. *See Crumpton v. Gates*,
09 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a plaintiff must allege facts
10 showing how individually named defendants caused or personally participated in causing the harm
11 alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

12 A careful review of plaintiff's amended complaint reveals that, with a single exception,
13 plaintiff has not alleged sufficient facts to demonstrate that any defendant personally participated
14 in causing the harm alleged in the complaint. As noted by defendants in their summary judgment
15 motion "[m]ost of Mills' allegations contain a recitation of his grievances followed by a statement
16 that he submitted letters, service request kites, oral complaints, and/or administrative grievances
17 to specific defendants to no avail." (Dkt. No. 61 at 6.) Even those allegations which contain
18 slightly more specific facts regarding the personal involvement of certain defendants, such as those
19 regarding plaintiff's transfer to, retention in, and conditions of confinement in, the acute
20 psychiatric housing unit, are nonetheless conclusory and therefore insufficient to state a cause of
21 action under § 1983. *See Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

22 The single defendant against whom plaintiff has presented his allegations with the requisite

01 specificity is defendant Barbara Massey.⁴ However, as will be explained below, while plaintiff has
02 arguably alleged sufficient facts to demonstrate defendant Massey's personal participation, he has
03 not alleged sufficient facts to demonstrate that defendant Massey's conduct violated any of his
04 federal constitutional rights.

05 Inadequate Access to Legal Material

06 Plaintiff alleges in his amended complaint that he encountered a number of barriers to his
07 right of access to the court. Among plaintiff's contentions are that defendants failed to respond
08 to his requests for legal materials, granted him only limited access to law books, denied him all
09 access to certain materials, and denied him any physical access to the law library.

10 It is well established that inmates have a constitutional right of meaningful access to the
11 courts premised on the due process clause. *Bounds v. Smith*, 430 U.S. 817, 821 (1977). In order
12 to adequately allege a cause of action for deprivation of the right of access to the courts, an inmate
13 must demonstrate that he suffered some actual injury to his right of access. *Lewis v. Casey*, 518
14 U.S. 343 (1996). While plaintiff identifies a number of deficiencies in the legal access scheme at
15 KCCF, he offers no evidence demonstrating that he suffered an actual injury to his right of access
16 as a result of these deficiencies. Thus, plaintiff has not adequately alleged a cause of action for
17 deprivation of his right of access to the courts.

18 Assignment to Psychiatric Housing Unit

19 Plaintiff alleges in his amended complaint that he was transferred from the general
20 population to psychiatric housing without his consent, without due process, and without any
21 justification. The procedural guarantees of the Fourteenth Amendment's Due Process Clause

22 ⁴ Plaintiff's claims against defendant Massey relate only to legal access.

01 apply only when a constitutionally protected liberty interest is at stake. *Ingraham v. Wright*, 430
02 U.S. 651, 672 (1977). Liberty interests protected by the Fourteenth Amendment may arise from
03 either the Due Process Clause itself or from state law. *Meachum v. Fano*, 427 U.S. 215, 223-27
04 (1976).

05 It is well established that a prisoner does not have a constitutional right to a particular
06 classification status. *Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) (citing *Moody*
07 *v. Daggett*, 429 U.S. 78 (1976)). Plaintiff appears to suggest in his amended complaint that he
08 has a state created liberty interest in freedom from placement in the psychiatric housing unit.
09 Plaintiff's specific assertion is that defendants are bound by the procedures set forth in RCW
10 71.05, and that they have violated those procedures. (Dkt. No. 12 at 17.) However, neither
11 plaintiff's pleading, nor this Court's review of RCW 71.05, *et seq.*, reveals how these statutory
12 provisions apply in the circumstances presented here. As plaintiff has no constitutional right to
13 a particular classification status, and as plaintiff makes no showing that he has a state created
14 liberty interest in freedom from placement in the psychiatric housing unit, plaintiff's due process
15 claim fails.

16 Conditions of Confinement

17 Plaintiff alleges in his amended complaint that he was subjected to unconstitutional
18 conditions during his confinement in the psychiatric housing unit. In addition to his claims that
19 his placement inhibited his right of legal access, he also claims that his commissary privileges were
20 restricted, he was subjected to unsanitary and unsafe conditions, and he received inadequate
21 medical care. He further contends that, while in the psychiatric housing unit, he was denied access
22 to outside recreation, television, and group worship.

01 The Eighth Amendment imposes a duty upon prison officials to provide humane conditions
02 of confinement. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). This duty includes ensuring that
03 inmates receive adequate food, clothing, shelter, and medical care. In order to establish an Eighth
04 Amendment violation, a prisoner must show that prison officials knew of and disregarded a
05 substantial risk of serious harm to his health or safety. *Farmer v. Brennan*, 511 U.S. 825, 837
06 (1994). Because plaintiff asserts that he was a pretrial detainee at the time he was subject to the
07 alleged unconstitutional conduct of defendants, his claims arise under the Due Process Clause of
08 the Fourteenth Amendment. *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996). Eighth
09 Amendment standards are, however, still applicable to his claims. *See Id.*

10 In order to establish an Eighth Amendment violation, a prisoner must satisfy a two-part
11 test containing both an objective and a subjective component. The Eighth Amendment standard
12 requires proof that (1) the alleged wrongdoing was objectively "harmful enough" to establish a
13 constitutional violation; and (2) the prison official acted with a sufficiently culpable state of mind.
14 *Farmer v. Brennan*, 511 U.S. at 834.

15 The objective component of an Eighth Amendment claim is "contextual and responsive to
16 'contemporary standards of decency'" *Hudson v. McMillian*, 503 U.S. 1, 8 (1992)(quoting *Estelle*
17 *v. Gamble*, 429 U.S. 97, 103 (1976)). The state of mind requirement under the subjective
18 component of the Eighth Amendment standard has been defined as "deliberate indifference" to an
19 inmate's health or safety. *Farmer v. Brennan*, 511 U.S. at 834.

20 Plaintiff makes clear in his amended complaint that he was dissatisfied with his housing
21 assignment, with the mental health treatment he received at KCCF, and with the conditions under
22 which he was confined in the psychiatric unit. However, plaintiff makes no showing that

01 defendants were deliberately indifferent to his health or safety. Defendants have provided evidence
02 that plaintiff was assigned to the psychiatric housing unit in an effort to ensure his own safety, and
03 that defendants were responsive to plaintiff's mental health issues. Plaintiff has come forth with
04 no evidence to refute the evidence presented by defendants. Likewise, plaintiff has provided no
05 evidence that he suffered any serious harm as a result of the alleged unconstitutional conditions.
06 Thus, plaintiff has failed to adequately allege any due process violation related to his confinement
07 in the psychiatric housing unit.

08 CONCLUSION

09 Defendants have properly supported their summary judgment motion by pointing out
10 through argument, declarations, and exhibits that "that there [was] an absence of evidence to
11 support" plaintiff's claims. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In light of
12 the evidence produced by defendant in support of her summary judgment motion, the burden was
13 on plaintiff to produce authenticated materials in opposition to the motion that "set forth specific
14 facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *see Celotex*, 477 U.S.
15 at 323. Plaintiff fails to satisfy that burden and, thus, defendants are entitled to summary
16 judgment. This Court therefore recommends that defendants' motion for summary judgment be
17 granted. A proposed order accompanies this Report and Recommendation.

18 DATED this 14th day of June, 2006.

19 
20 Mary Alice Theiler
21 United States Magistrate Judge
22